

IN THE WATER COURT OF THE STATE OF MONTANA  
CLARK FORK DIVISION  
KOOTENAI RIVER BASIN (76D)  
PRELIMINARY DECREE

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CLAIMANT: P & M Properties of Eureka LLC

**CASE 76D-0091-R-2022**  
76D 18001-00

OBJECTOR: United States of America (USDA Forest Service)

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

**MASTER'S REPORT**

Water Right Claim 76D 18001-00 appeared in the Preliminary Decree for the Kootenai River Basin (Basin 76D) issued May 6, 2021. This claim received an issue remark. Issue remarks result from Department of Natural Resources and Conservation

(“DNRC”) claims examination or by Water Court order. Claims examination confirms the historical use of water right claims and identifies issues with claims. If claims examination cannot confirm some aspect of a claim, an issue remark is added to the claim. This claim also received an objection filed by the United States of America (USDA Forest Service).

The Court consolidated this claim into a Water Court Case on December 23, 2022. The Court subsequently set a settlement period beginning February 8, 2023. The parties filed a stipulation resolving objections on April 21, 2023.

### **FINDINGS OF FACT**

1. Claim 76D 18001-00 appeared with the following issue remark:  
DITCH NAME WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.
2. The United States objected to the place of use and maximum acres of this claim.
3. The parties stipulate to adding the following information remark to the place of use:

### **THE PLACE OF USE IS LIMITED TO HES 785.**

4. The United States indicates its objection would be resolved upon addition of the above-referenced remark to Claim 76D 18001-00.
5. The requested remark should be added to the place of use of Claim 76D 18001-00.
6. The issue remark should be removed.

### **APPLICABLE LAW**

1. A properly filed statement of claim is prima facie proof of its content. Section 85-2-227, MCA. The prima facie status of a claim may be overcome by a preponderance of the evidence. Section 85-2-227, MCA; Rule 19, W.R.Adj.R. A

preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

2. The Water Court must weigh an issue remark, and the information resulting in that issue remark, against the claimed water right. Section 85-2-247(2), MCA.

3. The Water Court must resolve all issue remarks not resolved through the objection process. Section 85-2-248, MCA. The Court must review information in the claim file or obtained by the Court to determine if there is a sufficient basis to resolve the remarks. 85-2-248(3), MCA.

4. The Water Court has the authority to hear all objections to the elements of any claim included in a Court issued Temporary Preliminary Decree or Preliminary Decree. Section 85-2-233, MCA.

### **CONCLUSIONS OF LAW**

1. The changes described in the Findings of Fact may be made because the evidence in the record overcomes the prima facie status of the claim by a preponderance of the evidence.

2. The stipulation may be approved because the requested change does not result in an increase in any element of the claim.

3. The evidence in the record provides the Court with a sufficient basis to resolve and remove the issue remark from the above-captioned claim.

### **RECOMMENDATIONS**

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A post-decree abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state’s centralized record system.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service Via Electronic Mail:**

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**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
KOOTENAI RIVER  
BASIN 76D**

**Water Right Number:** 76D 18001-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** P & M PROPERTIES OF EUREKA LLC  
PO BOX 440  
EUREKA, MT 59917

**Priority Date:** SEPTEMBER 20, 1928

**Type of Historical Right:** FILED

**Purpose (use):** IRRIGATION

**Irrigation Type:** SPRINKLER

**Flow Rate:** 2.65 CFS

**Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**Climatic Area:** 4 - MODERATELY LOW

**Maximum Acres:** 70.00

**Source Name:** UNNAMED TRIBUTARY OF GRAVE CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SENENW	4	35N	25W	LINCOLN

**Period of Diversion:** MAY 1 TO SEPTEMBER 1

**Diversion Means:** HEADGATE

**Ditch Name:** STOKEN DITCH

**Period of Use:** MAY 1 TO SEPTEMBER 1

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	10.00		NWSENW	4	35N	25W	LINCOLN
2	7.00		NESENW	4	35N	25W	LINCOLN
3	2.00		SESENW	4	35N	25W	LINCOLN
4	9.00		SWSENW	4	35N	25W	LINCOLN
5	1.00		NWNESW	4	35N	25W	LINCOLN
6	4.00		NWNWSW	4	35N	25W	LINCOLN
7	9.00		NENWSW	4	35N	25W	LINCOLN
8	3.00		SENWSW	4	35N	25W	LINCOLN
9	3.00		SWNWSW	4	35N	25W	LINCOLN
10	2.00		SWNENW	4	35N	25W	LINCOLN
11	1.00		SENENW	4	35N	25W	LINCOLN
12	7.00		NESWNW	4	35N	25W	LINCOLN
13	10.00		SESWNW	4	35N	25W	LINCOLN

14	<u>2.00</u>	SWSWNW	4	35N	25W	LINCOLN
<b>Total:</b>	70.00					

THE PLACE OF USE IS LIMITED TO HES 785

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**Remarks:**

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

18001-00	18002-00	18003-00
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